90-1209

(1)

Supreme Court, U.S.
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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

JOYCE BALZER,

Petitioner

versus

DONALD MEIER, JAMES BOOK,
K-B FARMS, INC., AND ROBERT H. FRIEL

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Joyce Balzer, Pro se
1302 Coolidge Place
Rockford, Illinois
61107

QUESTIONS PRESENTED

I. A) Whether denial of a Trial by Jury violates plaintiff's fundamental rights in Civil Trials which involves absence of required permits for illegal rechannelization and personal gain by public official and other adjacent landowners; B) Whether plaintiff's First Amendment Rights to Freedoms made applicable to the States through Due Process Clause of 14th Amendment are being violated, namely, Property Rights and Freedom of Expression Rights; specifically, Right to Protected Speech, Right to Assemble, and C) The Right of Parent(s) to choose children's environment free from interference under the Fourteenth Amendment.

II. Whether plaintiff's property rights as a married woman are being violated under Equal Protection of the Fourteenth Amendment to the United States Constitution?

III. A) Whether interpretation of Ill. Rev. Stat. 1987, ch. 110, par. 2-1203 pertaining to Summary

Judgment is repugnant to United States Constitution as construed in the 5/3/90 State Appellate Court Second District Judgment with (3) Summary Judgments and no intervening evidence after the consent issue had been decided by a previous judge; and if a conflict between circuits is created by affirming the trial court?

IV. Whether Insurance Company acted improperly by NOT proceeding to Court for Declaratory Judgment in Open Court?

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IN THE SUPREME COURT OF
THE UNITED STATES

No._____

JOYCE BALZER, PRO SE PETITIONER

V

DONALD MEIER, JAMES BOOK,
K-B FARMS, INC. AND ROBERT H. FRIEL
PETITION FOR A WRIT OF CERTIORARI TO SUPREME COURT

To the Honorable, the Chief Justice and Associate Justices of the Suppreme Court of the United States:

Joyce Balzer, the petitioner herein, prays that a writ of certiorari issue to review the judgments of the following: 1) Trial Court Order of the 17th Judicial Circuit of the State of Illinois entered in the above-entitled case on June 23, 1989; 2) Appellate Court Order of the Second District of the State of Illinois entered in the above-entitled case on May 3, 1990; and 3) Denial of Appeal to the Supreme Court of the State of Illinois issued to plaintiff in the above-entitled case on October 3, 1990.

OPINIONS BELOW

The Illinois Supreme Court's denial of appeal, whose judgment is herein sought to be reviewed, is reported at 1) Illinois Supreme Court, No. 70317, 10/3/90, and is reprinted in the separate Appendix A to this petition, p. 23; 2) Appellate Court for the Second District of the State of Illinois, No. 2-89-0898, 5/3/90, and is reprinted in Appendix A of this petition, pp. 11-20; 3) Trial Court of the 17th Judicial Circuit, No. 84 L 43, 6/23/89, and is reprinted in Appendix A of this petition, pp. 1-5; and denial of rehearing 8/7/89, and is reprinted in Appendix A of this petition pp. 6.

JURISDICTION

The judgment of the Trial Court (action filed in Boone County and dismissed via closed court in Winnebago County) from the 17th Judicial Circuit of the State of Illinois (Appendix A pages 1-5) was entered on June 23, 1989. A timely petition for rehearing was denied on 8/11/89 by the Trial Court (Appendix A, page 6.) Thereafter, a timely appeal

to the Illinois Appellate Court, Second District from the Circuit Court of Boone was made on 8/31/89 (Appendix A, 7-10). The judgment of the State of Illinois Appellate Court Second District was entered on 5/3/90 (Appendix A, pp. 11-20). Thereafter, a timely petition to appeal to the Illinois Supreme Court was made 5/23/90 (Appendix A, pages 21-22) and such appeal was subsequently denied (Appendix A, p. 23). Thereafter, a timely Motion for Stay of Judgment (Appendix A, pp. 24-25 was granted by the Illinois Supreme Court (Appendix A, 26-27). Proof of application for certiorari was mailed to the Illinois Supreme Court 1/2/90 (Appendix A, pp. 28-29). The jurisdiction of the Supreme Court is invoked under 28 USCS, Paragraph 1257.

QUESTIONS PRESENTED

I. A) Whether denial of a Trial by Jury violates plaintiff's fundamental rights in Civil Trials which involves absence of required permits for illegal rechannelization and personal gain by

public official and other adjacent landowners; B) Whether plaintiff's First Amendment Rights to Freedoms made applicable to the States through Due Process Clause of 14th Amendment are being violated, namely, Property Rights and Freedom of Expression Rights; specifically, Right to Protected Speech, Right to Assemble, and C) The Right of Parent(s) to choose children's environment free from interference under the Fourteenth Amendment.

II. Whether plaintiff's property rights as a married woman are being violated under Equal Protection of the Fourteenth Amendment to the United States Constitution?

III. A) Whether interpretation of Ill. Rev. Stat. 1987, ch. 110, par. 2-1203 pertaining to Summary Judgment is repugnant to United States Constitution as construed in the 5/3/90 State Appellate Court Second District Judgment with (3) Summary Judgments and no intervening evidence after the consent issue had been decided by a previous judge; and if a

conflict between circuits is created by affirming the trial court?

IV. Whether Insurance Company acted improperly by NOT proceeding to Court for Declaratory Judgment in Open Court?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I. A) Whether denial of a Trial by Jury violates plaintiff's fundamental rights in Civil Trials which involves personal gain and absence of required permits for illegal rechannelization by public official and other adjacent landowners?

This case involves the Seventh Amendment to the Constitution of the United States which provides as follows:

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of a trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

In Section 3:665 (2 Fed Proc L Ed) where "The

right to a jury trial in civil actions at common law is protected by the Seventh Amendment, and the maintenance of the jury as a fact finding body is of such historical importance that the curtailment of the right to a jury trial should be scrutinized with the utmost care." (Curry v Pyramid Life Ins. Co.). "The jury determines issues of fact and the court resolves matters of law." (The Bill of Rights: Fundamental Freedom). Under above Section 3:665 denial of a jury trial constitutes "prejudicial error" because 1) Matters presented were properly triable by jury; 2) A jury demand was timely made; 3) Fact questions were presented; and 4) It appears that the trial judge acted in chambers errorneously. FRCP 38a; and Trial Sections 77.79 et seq. (33 Fed Proc L Ed.) Section 3:121 (2 Fed Proc L Ed) designates the Supreme Court as having jurisdiction "Where any title, right, privilege, or immunity is specially set up or claimed under the Constitution...".

Particular errors, NOT classified as "Harmless" and which interfere with substantial justice of

plaintiff's case are: 1) Evidentiary Questions and Rulings, Section 3:210--"Ordinarily, the Supreme Court will not grant certiorari merely to review evidence or inferences drawn therefrom. However, special and important reasons for the grant of certiorari are present where lower federal and state courts persistently deprive litigants of their right to a jury determination."; 2) Improper Reception and/or Exclusion of Evidence--Section 3:668 whereby, in this case not distrubing a judgment order is "inconsistent with substantial justice." and "exclusion of evidence is prejudicial." (Section; 3670); 3) Variance Between Pleadings and Proof, Section 3:672--"..; there must be an inquiry as to whether the variance affects the substantial rights of parties." 4) Erroneous or Insufficient Findings of Fact by Trial Court--Section Section 3:683 which provides that it is essential that "...the court's conclusion is clearly correct, the judgment is clearly supported by the record, or if the findings which were actually made, and the findings necessarily implied

by the judgment, are sufficient to support the judgment and are not clearly erroneous."; 5) Improper Exercise of Powers by Public Official, Section 3:121 which provides that "Certiorari is also the proper method of reviewing claims that a state official exercised his powers in an unconstitutional manner"; and 6) Individual Judge Acting in Chambers, Section 3:44--"An action by an individual judge sitting in chambers may be directly reviewed by the United States Supreme Court if it appears that the judge acted as a judicial tribunal having jurisdiction over the matter, his judgment is not subject to review by any other court of the state, and there is no higher court of the state to which another petition for the relief sought can be addressed." (2 Fed Proc L Ed.)

I. B) Whether plaintiff's First Amendment Rights to Freedoms made applicable to the States through Due Process Clause of the 14th Amendment are being violated, namely, Property Rights and Freedom of Expression Rights, specifically, Right to Protected

Speech, Right to Assemble, and the Right of Parent(s) to choose children's quality environment free from interference?

1) This case involves the Fourteenth Amendment (Section 1) of the United States Constitution which provides that "...no state shall 'deprive any person of life, liberty, or property without due process of law.' Since that decision, the Supreme Court has ruled that a denial by a State of certain of the rights contained in the Bill of Rights actually represents a denial of due process of law." (The Bill of Rights: Fundamental Freedom).

2) This case also involves the Fifth Amendment--Due Process of Law which provides that "...government cannot unfairly or arbitrarily interfere with personal liberty or property. (United States Constitution). Essential requirements of Due Process involve "Notice, Hearing, Impartial Tribunal, Confrontation and Cross-Examination, Decision on the Record, and Counsel." (The Constitution of the United States of America--Analysis and Interpretation, pp.

1639-1643); (Constitutional Law, pp. 145-148).

3) This case also involves the First Amendment of the United States Constitution. The First Amendment provides that "Congress shall make no law...abridging the freedom of speech." Also, under the First Amendment is the right to "Assemble And To Petition For Redress Of Grievances." (Civil Rights (6 Fed Proc, L Ed.))

4) This case, involving the Fourteenth Amendment and 5th Amendment, of the United States Constitution, preserves the liberty of self-determination in choosing preferred environment for one's children and oneself under substantive due process where "The liberty mentioned in [The Fourteenth] Amendment means...the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in lawful ways; to live and work where he will; to earn his livelihood by any lawful calling...and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above

mentioned." (Teterud v. Burns). These are "substantive rights which have been implied from, or have been read into the United States Constitution (e.g. association and belief, privacy) (Constitutional Law, p. 150).

II. Whether plaintiff's property rights as a married woman are being violated under Equal Protection of the Fourteenth Amendment to the United State's Constitution?

1) This case involves the Fourteenth Amendment (Section 1) which guarantees that "[n]o State shall make or enforce any law which shall...deny to any person within its jurisdiction the equal protection of the laws."

2) This case also involves Property Rights of Married Women granted by the State of Illinois under a) Common Law Agreement and b) Joint Tenancy:

a) Illinois is a common-law state: "In Illinois a married woman is the sole owner of her separate property whether acquired before or after the

marriage...She is entitled to her own earnings and the income of her own property and she may manage, sell and convey her separate property without the consent of her husband." (The Legal Rights of Women; p. 52.) "..,in common law states the courts hold that a husband and wife separately own whatever they have independently purchased with their own funds." (Womanlaw; pp. 139-142.)

b) The focus of this controversy is held in joint tenancy. "When property is owned in joint tenancy by a husband and wife, it is legally said that each owner has an undivided one-half interest in the entire property. (Womanlaw; pp. 139.) "As in common law states, management and control rights are based on title...The management and control provisions confer on each spouse exclusive dominion over his/her individual property...Spouses must act together if the property is held in the conjunctive "and" form." (Women and the Law; pp 3A-18 through 3A-20).

III. A) Whether interpretation of Ill. Rev. Stat.

1987, ch. 110, par. 2-1203 pertaining to Summary Judgment is repugnant to the United States Constitution as construed in the 5/3/90 State Appellate Court Second District Judgment, Section 3:115 (2 Fed Proc, L Ed)--"The Supreme Court can also review a contention that a state statute, as construed and applied, is repugnant to the Constitution or federal law." and Section 3:121 (Fed Proc L Ed) "Where the validity of a state statute is drawn into question on the ground of it being repugnant to the Constitution,.."; and if a conflict between circuits on similar cases is created by the Second District Appellate Court affirming the trial court? (Eisenbrandt v Finnegan, 509 N.E.2d 1037 (Ill.App.3 Dist. 1987) and (Klimek v Hitch, 80 Ill.Dec. 289, 464 N.E.2d 1272 (Ill.App.4 Dist. 1984). (2 Fed Proc, L Ed.)

IV. This case involving insurance liability is 'affected with a public interest' according to German Alliance Ins. Co. v Lewis. Being affected with the public interest, "business methods"

regulation is required under the 1945 Public Law 15 (the McCarran-Ferguson Act) passed by Congress.

STATEMENT OF THE CASE

This is a controversial Trespass action involving the illegal REchannelization and interception (App. B. Exh. 3 & 4) of a federal creek just prior to its natural course of entry on plaintiff's land initiated by Public Official--Boone County Board member, K-B Farms Corporation's director, Production Credit director and another adjacent landowner in order to drain their wetlands, such being done knowingly, according to public official's Donald Meier's deposition, without any state or federal permits (App. pp. 1-3).

Without a Prior Rechannelization Permit by the defendants plaintiff alleges that "Due Process Rights" under the Fourteenth Amendment are being violated. The Corps states that the REchannelization cannot be undone; yet, the Corps issued a Post Facto Permit to the defendants

February 1, 1984 resulting in plaintiff's federal court dismissal.

This federal question of no required permits was first brought up in State Court in Complaint (App. pp. 4-8). Lack of due process was brought up for the first time in the Motion For Rehearing of Reconsideration of Motion For Summary Judgment (App. pp. 39-40) and Reply To Motion For Sanctions Pursuant Section 2-611 (App. p. 42-43) plus all subsequent briefs; no judgment call was made. It then was brought up in the Petition to Appeal to the Illinois Supreme Court (App. pp. 51-57) where appeal was denied (App. A. p.11). The federal question pertaining to public official was first brought up in Reply to Motion For Santions Pursuant to Section 2-611 (App. p. 45).

I. This trespass action was brought into State Court by plaintiff through counsel, in conjunction with husband, with the original complaint filed October 25, 1984 (App. pp. 4-7), specifying the theory or true nature of case as REchannelization. According to Supreme Court Rule 276 (Ill. Rev.

Stat.) request for trial by jury in the Trial Court was made with the complaint (App. pp. 8-9). Plaintiff, sought venue out of Boone County due to influential defendants and such venue was denied March 28, 1985. (App. pp. 15). Due to lack of action the case went on slaughter call and plaintiff learned that "These kinds of cases never go to trial." Subsequently, plaintiff, in conjunction with six of her eight children, picketed the court house for 4 hours June 4, 1987 (App. B. Exh. 1-2).

The record reflects that from this point on, after plaintiff's exercise of First Amendment Rights, irregularities ensued which led to case dismissal WITHOUT trial by jury as requested in timely fashion, in violation of plaintiff's Seventh Amendment Rights. (App. 8-9). The federal question regarding protected speech and right to assembly was first brought up in Trial Court at Motion for Rehearing and Petition For Leave To Appeal to Illinois Supreme Court (App. p. 59). The appeal was denied. The federal question of the Right of

Parent(s) to choose quality environment free from interference was first brought up at the Trial Court level in REBUTTAL OF INTERPRETATION OF BALZER'S DEPOSITION IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (March 4, 1988) filed June 16, 1989 (App. p. 38) prior to the signing of the Trial Court Judgment Order (App. A. p. 5).

The federal question of denial of trial by jury was first brought up in the Trial Court in "MOTION FOR REHEARING OF MOTION FOR RECONSIDERATION OF MOTION FOR SUMMARY JUDGMENT (App. pp. 39-40) and "Reply TO MOTION FOR SANCTIONS PURSUANT TO SECTION 2-611 (App. pp. 42, 45). Thereafter, it was brought up in the Appellate (App. pp. 48, 50, 58) in intermediate court where 5 of the 6 questions presented in appellant's brief (App. 48-50) dealt with the inappropriateness of summary judgment and case dismissal without a trial by jury; also, it was brought up in the Petition to Appeal to the Illinois Supreme Court (App. p. 54) where appeal was denied; Judgments rendered were August 8, 1989 Trial Court Order (App. A p. 6) and the 5/3/90

Appellate Judgment Order (App.[A] pp. 12-20) which confirmed the Summary Judgment of the trial court. This was done in spite of the core irregularities involved, in general: 1) Changing the theory of the case, 2) Creating a contradiction within plaintiff's case, and 3) Attempting to block the material facts in issue, consent and damages, so as to effect case dismissal; these interferences to a trial by jury are as follows : (1) By changing the theory of the case--the Amended Complaint was changed. The true nature of the case in original Complaint (App. p. 6) was changed from REchannelization (make new pathways) to channelization (rework) in the Amended Complaint (App. p. 12). [Point #7 of both Complaint and Amended Complaint are incorrect insofar as Donald Meier, public official, did not have access to the creek prior to rechannelization as it did not run on his land South of rt. 173. Such rechannelization gave him such access.] This substantial interference with a trial by jury was first brought up in the MOTION FOR REHEARING OF

RECONSIDERATION OF MOTION FOR SUMMARY JUDGMENT in the Trial Court (App. p. 40) and again in pleadings and briefs to the Appellate Court. The judgment call on Amemded Complaint was "taken with the case and omitted in appellate court judgment order.

(2) Secondly, interference with a jury trial was created by setting plaintiff's husband up for contradiction--As a reply to the affidavit of the public official, counsel drew up Robert Balzer's reply affidavit--omitting the "h" out of the word channelization which means "rework a creek" thus creating cannelization--a homonym to canalization which means "make new pathways" and INcorrectly describes the topic of a phone conversation which public official initiated to husband, Robert Balzer (App.21-22). The following day after husband signed affidavit, plaintiff requested new affidavit from counsel who then drew up second affidavit with the correct spelling "channelization" (App. p. 24). However, counsel proceeded to file on July 28, 1987 the INcorrect affidavit (App. pp. 21-22). Defense moved also on July 28, 1987 with public

official's affidavit (App. pp. 19-20) and plaintiff's husband's INcorrect affidavit (App. pp. 21-22) for the first Motion for Summary Judgment, (App. p. 17-18) which subsequently was denied by Judge Kapala August 28, 1987 (App. A p.26). Approximately five months later, 12/17/87 counsel allowed defense counsel to deposition husband (App. p. 25) with the Correct unsigned affidavit (App. p. 24) which was later found in file by plaintiff, returned by former counsel. After discovering case dismissal 6/16/89, almost a month after 5/19/89 case dismissal, plaintiff found in the court file (a) the unsigned Trial Judgment Order App. A. pp. 1-5), (b) Public Official Donald Meier's Affidavit (App. pp. 20-21), (c) the Incorrect Affidavit of Robert Balzer (App. p. 22), (d) Robert Balzer's Deposition, (App. p. 25) and (e) case citation, 516 N.E.2d 518 Commonwealth Western Mortgage v. Williams (114 Ill. Dec. 1987, 516 N.E.2d 515(Ill. App.1 Dist. 1987. (App. B, Exh. 5 & 6). (Since the precedent case citation was omitted by the Trial Court in Record on Appeal, luckily plaintiff had

the complete court file copied the day file was finally found, June 16, 1989.) Proof that the Corrected Affidavit was used to deposition Robert Balzer is on page 63 of his deposition (App. p. 25). This "Variance Between Between Pleadings and Proof" was first brought up to Trial Court at the Rehearing after case dismissal in Motion for Reconsideration of Motion for Summary Judgment (App. p. 40) and the Petition to Appeal to Illlnois Supreme Court, (App. p. 51). No judgment call at any level was made on this substantial interference with federal question of Trial by Jury as requested in timely fashion. (App. pp. 8-9).

(3) Thirdly, attempting to block material facts in issue--the Court File, discovered 6/16/90, contained NOTHING on behalf of Plaintiffs but included A) MOTION FOR SUMMARY JUDGMENT with Interpretation of Plaintiffs' discovery depositions" and B) "REQUEST FOR ADMISSION OF FACT AND OF GENUINENESS OF DOCUMENT". Regarding document (A)--it preceded the motion for second summmary judgment with interpretation of

plaintiffs' discovery depositions--parts taken out of context, interpretations and conclusions drawn in violation of Supreme Court Rule 212(c) (Ill. Rev. Stat.) "Partial Use: If only a part of a deposition is read or used at the trial (In instant case Trial by Jury Denied) by a party, any other party may at that time read or use or require him to read any other part of the deposition which ought in fairness to be considered in connection with the part read or used." This second summary judgment, like the first, was also denied. The Memoradum of Decision (App. pp. 29-30) for this judgment was not filed until one year later to the exact date of May 13, 1989, and the second judgment order (App. pp. 31-32) was not signed, nor filed in the court file. Plaintiff's answer, REBUTTAL OF INTERPRETATION OF BALZERS' DEPOSITION IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT was not filed by former counsel in a timely fashion; however plaintiff did file the rebuttal placing material facts in issue 6/16/90, (App. pp. 37-38), just before the Judgment Order for Case Dismissal

was signed 6/23/89 (App. pp. 1-5). However, on the docket sheet the filing of such document was typed 8/16/89, 2 months later. This is one of many "errors"; one can clearly see that the document was actually stamped 6/16/89, and thus placed material facts in issue pertaining to no consent and reality of damages. This document refutes both issues of Consent and Damages, and according to Sup. Ct. Rule 272 (Ill. Rev. Stat.) "...the judgment becomes final only when the signed judgment is filed." B) "REQUEST FOR ADMISSION OF FACT AND OF GENUINENESS OF DOCUMENTS preceded defendants' "third" move for Summary Judgment, "MOTION FOR RECONSIDERATION OF MOTION FOR SUMMARY JUDGMENT" filed May 8, 1989 (App. pp. 33-35). Former counsel failed to file plaintiff's answer to this document which points out how defense, submitting Agricultual Stabilization Conservation Service Records (App. B. Exh. 9 & 10), erroneously concluded in the June 24, 1989 Judgment Order that since 1979 Cropland Total was 89 acres and the 1987 Cropland Total was 92.3 acres "2b) The Balzers lost no tillable acreage as

a result of the creek rechannelization and in fact have increased to total crop land on their property since the rechannelization;" (App. A. p. 3) when the increase in total Cropland Acreage came NOT from the flooded acreage lying dormant but from pastureland in a different field. Both the REBUTTAL OF INTERPRETATION OF BALZER'S DEPOSITION IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (March 4, 1988) filed June 16, 1989 (App. pp. 37-38) and ANSWER TO REQUEST FOR ADMISSION OF FACT AND OF GENUINENESS OF DOCUMENT (March 27, 1989), filed 7/24/89 (App. 47) were before the Trial Court for the Motion for Rehearing 8/3/89 which was denied (App. A. p. 6). Exposure of defense's erroneous documents was also before the Appellate Court in appellant's brief with no judgment call; and in the Petition to the Illinois Supreme Court (App. p. 60) where appeal was denied. (App. A. p. 23).

Additional "Exclusion of Evidence" occurred when the Trial Court allowed the defendants-appellees to bring in plaintiffs-appellants' depositions one

whole month AFTER the Brief and Argument Deadline so such material was unavailable to appellant when writing plaintiff/appellant brief. According to Sup. Ct. Rule 212(d) (Ill. Rev. Stat.), "If any action in any court of this or any other jurisdiction of the United States is dismissed and another action involving the same subject matter is afterward brought between the same parties or.., all depositions lawfully taken and duly filed in the former action,..,may be used as if taken in the last action,.."; furthermore, according to Sup. Ct. Rule 207(b) "A deposition so certified requires no further proof of authenticity."

II. Whether plaintiff's property rights as a married woman are being violated under Equal Protection of the Fourteenth Amendment to the United States Constitution?: The Trial Court Judgment Order ignores plaintiff's property rights focusing on husband's alleged consent; however, the Appellate Court Judgment Order goes one step further and actually states, "...the plaintiffs

gave their consent for the work performed on Beaver Creek." This is the second instance when the property rights of plaintiff have been ignored and the legitimate question to be asked is, "Whether plaintiff's property rights as a 'married woman' are being violated under Equal Protection of the Fourteenth Amendment to the United States Constitution?" Plaintiff first brought up the fact of not knowing anything about the Rechannelization Project until it was over and discovered January 1, 1980 in the Trial Court in Rebuttal of Defendants' Interpretation of Plaintiffs' Depositions filed June 16, 1989 (App p. 37). "A MOTION FOR LEAVE TO SUPPLEMENT PETITION FOR LEAVE TO APPEAL" (App. p. 63)) was allowed by the Illinois Supreme Court on violation of married woman's property rights (App. p. 64).

III. Pertaining to the third question plaintiff can find no historical basis for (3) Summary Judgments; especially, resurgence of prior issue with no intervening evidence. (N.B. Defense's

5/5/89 letter to judge talks about "renewed" summary judgment. It is really the third one. Several precedent cases, mirroring plaintiff's case, now appear in conflict with the judgment of Appellate Court; namely, Daum v Cooper, Eisenbrandt v Finnegan, and Klimek v Hitch.

7. Lastly, whether Rockford Mutual Insurance Company acted improperly by NOT proceeding to Court for Declaratory Judgment on Liability Policy held by Defendants, Public Official and K-B Farms Director, in the Fall, 1979 when the Rechannelization Project was executed. May, 1988, plaintiff(s) began receiving a computerized billing from counsel; since the case was taken on contingency an appointment was made to clarify that issue. However, plaintiff and husband were told that another lawyer was recently involved representing the insurance company. Rather than go to court for declaratory judgment the insurance company was willing to throw some money into the pot. Plaintiff was told that though the second

summary judgment was still in plaintiff's favor the judge had said it was a close judgment call, like the "thickness of a human hair" (App. pp. 29-30). Plaintiff refused counsel's offer to bow out and be even attorney fees. Plaintiff was also told that the case would either go to trial or settlement. A little over one year later, and several cancelled Pre-Trial Notices (App. B. Exh. 7 & 8) later, plaintiff's case was dismissed without any notice to plaintiff on May 19, 1989. Plaintiff showed up for all the announced pre-trials only to sit and hear from the bailiff that they had been cancelled. (The record indicates that Attorney Kardell's name appeared on the Pre Trial notices 12/6/88 for 12/9/88 (App. B. Exh. 7) and again 5/8/89 for 5/19/89 (App. B. Exh. 8), the day of plaintiff's case dismissal). Likewise, defense attorney mailed a copy of his letter to the judge as a reminder for the "renewed" summary judgment motion and pretrial conference" (App. p. 36) for 5/19/89. Neither the Boone County Court nor Winnebago County Court dockets shows any activity

on this case for May 19, 1989. In June, 1990 House Counsel for Rockford Mutual Ins. Co. informed plaintiff and husband that they have been defending this lawsuit for 10 years as they carried the liability policies for public official Donald Meier and K-B Farms Corporation Director in the the Fall, 1979 when illegal rechannelization was effected. This issue about who received the money the insurance company was willing to throw into the pot was first brought up in Reply Brief of Plaintiffs-Appellants, where no judgment call was made. It was then brought up in Illinois Supreme Court in "Motion by petitioner, pro se, for leave to supplement the petition for leave to appeal instanter. Motion allowed." (App. p. 64). Plaintiff's motion to stay the mandate pending application for certiorari was granted and filed October 29, 1990 (App. A. pp. 24-25).

REASONS WRIT SHOULD BE GRANTED

I. Enforcement of the Judgment Orders in this controversy deprives plaintiff of Rights accorded all United States Citizens--Rights in Civil Trials, Property Rights, First Amendment Freedom of Expression Rights, Procedual Due Process and the Freedom to choose children's environment free from interference. These rights, dependent on Seventh Amendment Rights in Civil Trials, have been violated whereby liberty and property rights are protected under procedural due process of the Fourteenth Amendment. Denial of a civil trial has interferred with judicial relief requested. Plaintiff is seeking legal relief for both compensatory and punitive damages. Plaintiff alleges injury in fact because of property loss in flooded plain, subsequent economic losses, and recreational, aesthetical, environmental injuries and the freedom of choosing plannned environment for children. Judicial relief alone can redress these injuries.

"Certiorari is also the proper remedy when...some title, right, privilege, or immunity is

claimed under federal law." (Section 3:12, 2 Fed Proc, L Ed). "..,special and important reasons for the grant of certiorari are present where lower federal and state courts persistently deprive litigants of their right to a jury determination." Section 3:210 (Rogers v Missouri, P.R.Co.).

Above in Statement of Facts plaintiff pointed out variances between pleadings and proof and erroneous insufficient findings of fact by judge in chambers. "..;there must be an inquiry as to whether the variance affects the substantial rights of the parties." (Berger v United States). Plaintiff alleges the variance does, indeed, affect plaintiff's substantial rights. The judgments of both the Trial Court and the Appellate Court clearly do not conform with the true facts. The judgment of trial court is not supported by the record and is clearly erroneous based on incorrect theory of the case, affidavit/deposition trick, and erroneous conclusions of ASCS records regarding damages to say nothing of inaccessibility of plaintiff's file and improper reception and

exclusion of evidence. The appellate court order states, "We find from the evidence presented that no reasonable person could determine that the Balzers did not consent to the work performed." (App. A. p. 19) "The excluded evidence would have been sufficient to support a verdict in favor of the appellant." (Hutter Northern Trust v Door County Chamber of Commerce).

The judgments appealed from are "against the manifest weight of the evidence." (Wallace v. Blue Cross Hosp. Serv.,) and represent a denial of plaintiff's constitutional rights. Plaintiff requested a trial by jury (App. p. 8 & 9) and paid the required fee; yet, the judge, not a jury determined issue of fact. ",.,where a state court is enforcing a federally created (civil) right, the right of trial by jury is a requirement. Even when a single valid claim under federal law is asserted along with other cause of action based on state law, jury trial must be offered as to the entire state proceeding." (Dile v. Akron C. Y.R. Co.,). ",..through passage of the Federal rules of Civil

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Procedure..,where legal and equitable actions are joined, this fundamental right now remains protected." (The Bill of Rights: Fundamental Freedom, pp. 39-40).

"Certiorari is also the proper method of reviewing claims that a state official exercised his powers in an unconstitutional manner." (Section 3:121, 2 Fed Proc, L Ed); (Zucht v King). Though "Public officials duties are a matter of state law" (Smith v Indiana) "When an official acts unconstitutinally the action is not state action at least for purposes of the Eleventh Amendment (Ex Parte Young). "State officials, however, in their individual capacity, can commit constitutional wrongs and in such a case, the Eleventh Amendment provides no refuge from federal jurisdiction." (Scheuer v Rhodes). Likewise, the Fourteenth Amendment qualifies pro tanto the Eleventh Amendment." (Constitutional Law, pp. 18).

Certiorari is also the proper method for reviewing claims of violations of due process rights which occurred 1) Under the Fourteenth

Amendment when Defendants proceeded to affect plaintiff's property with no required permits which would have afforded plaintiff with equal opportunity to respond; 2) How can violations of permit laws by defendants (depriving plaintiff of public hearing prior to rechannelization); allowing Corps to intrude into plaintiff's case in federal court accompanied by the granting defendants Post Facto Permit and resulting in case dismissal; and witnessing dismissal of plaintiff's case in closed session in State Court not be perceived as gross oversight of procedural due process? Basic requirements of procedural due process; i.e. notice, hearing and impartial tribunal are lacking. In all of these situations plaintiff did not have the opportunity to know what was proposed or how to prevent it. (Goldberg v. Kelly,) "'Parties whose rights are to be affected are entitled to be heard.'" (Constitution of the United States of America--Analysis and Interpretation, pp. 1640)..

Certiorari is also the proper means to review

First Amendment violations of Protected Speech and Assembly, (United States Constitution). "The Right of Free Speech is perhaps the most important in our political system; it is the ultimate foundation upon which all individual and political freedoms rest. It is the unique Freedom to Express opinions openly and without fear of recrimination that enables our political system to work effectively...The society is then governed in response to better informed and more concerned citizens." (The Bill of Rights: Fundamental Freedom). Plaintiff's motivation was without malice. Plaintiff operated within the local ordinance peacefully. The ordinance is not valid where it is so vague as not to inform one "of the conduct they must take to avoid the sanction of the particular law"--specifically, in instant case, picketing the court (App. B. p. 1); (Constitutional Law, 226-227). Under the doctrine of overbreadth, "A law may be facially clear but may sweep too broadly if it indiscriminately reaches both protected and unprotected

expression." (Ibid.) Impetus to picket included: 1) The federal case dismissal had already been experienced by plaintiff, 2) Now, the state case was on slaughter call, and 3) The defendants were still the same and plaintiff learned that "These cases never come to trial. "...in 1925 the Supreme Court declared that the Due Process Clause of the Fourteenth Amendment protected freedom of expression against state infringement." (Gitlow v New York (1925)). Ibid. "For, indeed, if the rights of one are suppressed, the freedom of all is jeopardized." (The Bill of Rights: Fundamental Freedom, p. vi).

Regarding the self-determination to raise children in desired environment, "It has been suggested that rights which may arguably be asserted under the Ninth Amendment: "...are rights which a free society reserves to the people.'" (Ibid. p. 46). Plaintiff states that the area in controversy (115 acres) was purchased in 1974 as a future homesite and place to rear children outside the sizeable city (175,000) and away from

concomitant problems. Due to seizure of creek by defendants the environmental, recreational, aesthetical realities are now non-existent. Inherent in "Pursuit of Happiness" is the concept of liberty--which includes "privacy", freedom from the interference with plans, performance and enjoyment. (Constitutional Law, p. 150). "The Court has said that liberty "denotes not merely freedom from bodily restraint but also the right of the individual to...establish a home and bring up children...as essential to the orderly pursuit of happiness by free men," (Ibid. p. 148); [and women]. Liberty also involves "substantive constitutional rights and other fundamental freedoms and a variety of fundamental interests relating to personal autonomy and choice." (Ibid. p. 151).

II. Plaintiff states that enforcement of the judgment orders violates her property rights as a married woman under Equal Protection of the Fourteenth Amendment to the United State's

Constitution. Briefly, in the Fall, 1979, plaintiff attended the U. of Illinois from Monday through Thursday for 16 weeks. Noone contacted plaintiff about any project of any kind, though plaintiff owns the property in Joint tenancy with husband. Only after the discovery of the creek interception, did plaintiff learn about it which was 1/1/80. Plaintiff alleges that she should have been contacted about any disposition or taking of her property. Since defendants had received NO permission from husband to rework the creek they just took it by intercepting it (App. B, Exh. 4). Husband's appeal was dismissed because plaintiff signed the appeal notice for him. "In Reed v Reed (1971), the court unanimously struck down a state law giving men a preference over women as administrators of estates." (Constitutional Law, p. 183). Yet, the Trial Judgment Order states, "..,through the actions of Robert Balzer, a joint tenant in possession and control of the property, gave the defendants their apparent consent for the rechannelization..." Plaintiff asks the legitimate

questions: 1) Does leaving your home for 4 days a week constitute abandoning or leaving your property in the control of the other joint tenant?; 2) How can the actions of someone else speak for plaintiff?; and 3) Is not specific consent with property issues required rather than "apparent" consent? (Actually no consent could have been given because the type of permission solicited and refused on the phone did not even resemble the actual work done.) Plaintiff has honestly and consistently disavowed any prior knowledge. Absolutely no contact was made to plaintiff for her consent for anything. Both under common law for married women and joint tenancy rulings Equal Protection appears to apply, App. pp(3-4)

III. Enforcement of the judgment orders appears to violate summary judgment rules and is repugnant to United States Constitution. Though choosing NOT to respond to many of the arguments in plaintiff's brief the appellate judgment order ruled on Ill. Rev. Stat. 1987, ch 110, par 2-1203. This is

really moot as 2-1203 only applies to non-jury trials; whereas plaintiffs requested trial by jury in timely fashion with material fact on damages and consent issues. Summary Judgment appears inappropriate, also, for the reasons set forth in plantiff's brief (App. pp 48-50). Plaintiff points out contradiction between MOTION FOR RECONSIDERATION OF MOTION FOR SUMMARY JUDGMENT, (App. 33-35) whereby, defense's admission "1. Although the Court has previously ruled that there is a general issue of material fact as to whether or not the plaintiffs,..consented..." (App. p. 33) and Trial Court Judgment Order "1. There is no genuine issue of mateial fact as to whether or not the Balzers consented...(App.A. p. 1). Enforcement of the judgment orders, like-wise, appears to create contradictions with rulings of other circuits in Daum v. Cooper, Eisenbradnt v Finnegan, and Klimek v Hitch) as set forth in plaintiff's brief (App. pp. 56-57). Certiorari should be granted to resolve conflicts in principle.

Historically, this controversy has been going on

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in excess of 11 years. In general, it involves a county board member meeting in a state office (ASCS) in the presence of its director discussing how to drain wetlands at plaintiff's expense for own personal gain--how to by-pass permit laws (App. pp1-3); and when case is in federal court such case is dismissed with the Army Corps of Engineers trumping in with their Post Facto Permit (Reply Brief of Plaintiffs-Appellants [illegible] and then state dismissal. Both the Trial Court Order and the Appellate Court Order merely concretize the thinking that "These kinds of cases never go to trial." In the Trial Judgment Order the errroneous facting-finding has been exposed. Regarding the issue of mitigating damages plaintiff no longer has what was bought; it cannot be put back like it was nor with any permanency with the natural creek bed within 15 ft. and less of the 27'X5'X5280+' man-made channel. In addition all the other damages exist with all the meanders out and additional drainage causing flooding back on plaintiff's land etc. Contrary to

what the appellate order states, Denial of Trial by Jury was properly presented and the issues why summary judgment is inappropriate. The Appellate Court chose not to address issues of fraud. Their evidence in the defense's brief consists of convoluted statements, parts of discovery deposition interpreted etc., all contrary to Supreme Court Rules regarding depositional use. Furthermore, it taxes the imagination greatly that anyone would want done to them what plaintiff has endured.

The Supreme Court should hear this case just to see the atrocities being committed in our courts in the State of Illinois. Unfortunately, the Spirit of the American people is being either broken or soured by these injustices; thus, counterproductive to a strong nation filled with the ideals upon which this country was founded.

IV. Lastly, regarding the money Rockford Mutual Insurance Company was "willing to throw into the pot". Do not these claimants (defendants) still

have unmet obligations to plaintiff regarding injuries inflicted? May, 1988, plaintiff's counsel switched from contingency to computerized billing [illegible] and waived that issue aside when confronted about it. It was at that time, also, plaintiff(s) was told "We are here to talk about the case instead; and that another lawyer representing the insurance company is involved." Pre-Trial notices indicate that the two defense attorneys remained involved and a new attorney became involved during the 1988-89 interim. The ripple of plaintiff's constitutional right violations which began on the trial level continued to the appellate level, EXCEPT for granting stay of mandate (App. A, pp 4-17).

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

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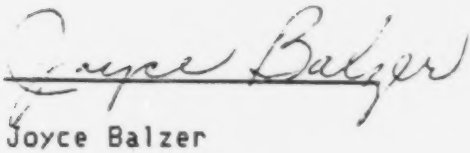
Respectfully submitted



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January 1, 1991